

In the United States District Court
for the Eastern District of Texas
Beaumont Division

Ralph Lynn Ferguson, Jr.	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 1:16-cv-272
	§	
Eric Marcine Dunn, <i>et al.</i> ,	§	
Defendants.	§	Jury

Defendant Dunn's Response in Opposition to Plaintiff's
Motion to Amend Final Judgment with Brief in Support

Defendant Eric Dunn asks the Court to deny Plaintiff's motion to amend the final judgment, as it is simply a rehash of previous arguments already rejected by the Court.

Statement of the Case

Ferguson brings suit for alleged violations of his Constitutional rights pursuant to 42 U.S.C. § 1983. The Court previously dismissed all but two claims brought against Trooper Dunn [D.E. 169 & 174]. The only remaining claims against Trooper Dunn are the alleged search and seizure of Ferguson's car after his arrest [D.E. 169 & 174]. These allegations arise from a traffic stop and arrest of Ferguson by Dunn on August 5, 2014 by Dunn, a trooper for the Texas Department of Public Safety [D.E. 169].

Dunn filed a summary judgment [D.E. 184]. Ferguson filed a response [D.E. 198], to which Dunn filed a reply [D.E. 200] and Ferguson filed a sur-reply [D.E. 201]. A Report and Recommendation was entered by the Magistrate Judge, recommending granting the motion [D.E. 202]. Ferguson filed objections [D.E. 205]. This Court adopted the Report and Recommendation and entered a Final Judgment in favor of Dunn [D.E. 207-208]. Ferguson now files a motion to amend the judgment [D.E. 210].

Statement of the Issue and Standard of Review

Whether the Court should amend the judgment pursuant to Rule 59?

Motions to alter or amend a judgment are generally disfavored. *See Southern Constructors Groups, Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993). It is up to the Court's discretion on whether to grant the motion. *Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005). "A district court abuses its discretion if it 'bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence.'" *Id.*, citing *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 638 (internal quotation marks and citation omitted).

"A motion to alter or amend judgment must 'clearly establish either a manifest error of law or fact or must present newly discovered evidence. These motions cannot be used to raise arguments which could, and should, have been made before the judgment issued. Moreover, they cannot be used to argue a case under a new legal theory.'" *Ross*, 426 F.3d at 763, citing *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 2005) (internal quotation marks and citations omitted).

Brief in Support

Ferguson's motion is nothing more than another rehash of his previous arguments regarding the evidence. In his listing of 9 times where the Court allegedly "misapprehended" that "facts", it is nothing more than his disagreement with the Court's assessment of the evidence and the law. There is nothing new in this motion, nor has Ferguson shown that the Court abused its discretion in a manifest error of law or fact, nor does it present newly discovered evidence.

Conclusion

Ferguson has failed to present either a manifest error of law or fact or must present newly discovered evidence. Therefore, his motion to amend the final judgment should be denied.

Respectfully submitted,

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Notice of Electronic Filing

I, Seth Byron Dennis, Assistant General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing Defendant Dunn's Response in Opposition to Plaintiff's Motion to Amend Final Judgment with Brief in Support in accordance with the Electronic Case Files System of the Eastern District of Texas, on this the 12th day of March, 2019.

/s/ Seth Byron Dennis
SETH BYRON DENNIS
Assistant Attorney General

Certificate of Service

I, Seth Byron Dennis, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing Defendant Dunn's Response in Opposition to Plaintiff's Motion to Amend Final Judgment with Brief in Support has been served by means of the Eastern District of Texas's CM/ECF filing system, in accordance with the Federal Rules of Civil Procedure on this the 12th day of March, 2019, addressed to all parties of record. It has also been sent by United States mail to:

Ralph Ferguson, Jr.
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/s/ Seth Byron Dennis
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